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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 702

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L.,
Appellant,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

STATEMENT AS TO JURISDICTION

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I. Preliminary Statement

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, Petitioner-Respondent International Brotherhood of Electrical Workers, Local B-953 A. F. of L. (hereinafter called appellant) respectfully submits this statement showing the grounds upon which it contends that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment of the

Supreme Court of Wisconsin made and entered in the above entitled cause on December 23, 1947.

(a) *Statutory Provisions Sustaining Jurisdiction*—The statutory provisions sustaining the jurisdiction of this appeal by the Supreme Court of the United States are contained in section 237(a) of the United States Judicial Code, as amended by the Act of January 31, 1928 (Act of Feb. 13, 1925, Ch. 229 Sec. 1, 43 Stat. 937; Act of January 31, 1928, Ch. 14 Sec. 1, 45 Stat. 54; 28 U. S. C. A. 344(a).)

(b) *Statute of the State, the Validity of Which is Involved*—The Statute of the State of Wisconsin, the validity of which is involved is the Wisconsin Employment Peace Act (Wisconsin Statutes (1945 ed.) Chapter 111, Sub-chapter I, Secs. 111.01 to 111.19 pp. 1795 to 1806). The pertinent provisions of said statute are set forth in Appendix A hereto.

(c) *Dates of Judgment and Appeal*—The final judgment of the Supreme Court of Wisconsin which is sought to be reviewed was entered in the office of the Clerk of said Court on December 23, 1947. The petition for appeal was presented on Feb. 25, 1948 and the appeal was allowed on Feb. 25th, 1948.

II. Nature of the Case and the Rulings

This case arose as the result of the Petition filed on October 8, 1946, by the Telephone Guild of Wisconsin (hereinafter referred to as the Guild) for an election among the employees of La Crosse Telephone Corporation of La Crosse, Wisconsin, to determine the bargaining representative for such employees. A hearing was held on this Petition at La Crosse by the Wisconsin Employment Relations Board on October 18, 1946. The Corporation and International Brotherhood of Electrical Workers, Local B-953

A. F. of L. objected to the Requested Direction of Election on a number of grounds, including the contention that the Corporation and International Brotherhood of Electrical Workers, Local B-953 A. F. of L. had a binding collective bargaining agreement. On November 27, 1946, the Wisconsin Employment Relations Board entered and filed a Direction of Election and pursuant to such Direction the Board conducted an election for bargaining representatives on December 17, 1946, following which the Wisconsin Employment Relations Board on January 14, 1947, certified the Guild as the exclusive collective bargaining representative for all employees in the Traffic and Plant Departments, excluding executive and supervisory employees.

Prior to the filing of the Petition for certification of representatives with the State Labor Relations Board, the Guild filed a petition for certification as a bargaining representative with the National Labor Relations Board on September 20, 1946. On October 8, 1946, the same day that the Guild filed its Petition with the State Board, the Guild requested the National Labor Relations Board to approve a withdrawal of its Petition to that Board.

On February 7, 1947, International Brotherhood of Electrical Workers, Local B-953 A. F. of L. filed with the Circuit Court of La Crosse County a Petition for review of the certification of bargaining representatives by the Wisconsin Employment Relations Board in this case under Section 111.07(8) of the Wisconsin Statutes. This petition contended that the decisions, orders and certifications of the Wisconsin Employment Relations Board are contrary to the Constitutional rights and privileges of the Petitioner in that Chapter 111 of the Wisconsin Statutes has been so construed and applied as to bring it into conflict with the National Labor Relations Act and Article I, Section 8, and Article VI of the Constitution of the United

States; that the Wisconsin Employment Relations Board had no jurisdiction over the subject matter for the reason that the National Labor Relations Board had previously undertaken to exercise the jurisdiction which the National Labor Relations Act conferred upon it and has not, insofar as the record discloses, relinquished such jurisdiction; that the decision and order of the Wisconsin Employment Relations Board affects the status of the employees of the La Crosse Telephone Corporation and causes a forfeiture of collective bargaining rights guaranteed to the Petitioner under the National Labor Relations Act and that the certification made by the Wisconsin Employment Relations Board is in excess of its statutory authority and jurisdiction because the La Crosse Telephone Corporation is engaged in interstate commerce and the question of the representation of its employees is, therefore, a matter within the jurisdiction of the National Labor Relations Board under the National Labor Relations Act. (R. pages 5 to 7.)

Judge Cowie of the Circuit Court of La Crosse County after considering the arguments in the case came to the conclusion that the decision of the Supreme Court of the United States in *Bethlehem Steel Company, et al.* v. *New York State Labor Relations Board* and *Allegheny Ludlum Steel Corporation* v. *William J. Kelley et al.*, leaves no Constitutional authority in the Wisconsin Employment Relations Board to determine collective bargaining units and to conduct collective bargaining elections among employees or employers engaged in Interstate commerce and referred to the admission that the La Crosse Telephone Corporation is so engaged in interstate commerce.

This decision was rendered on April 28, 1947, and judgment was entered May 9, 1947, reversing and setting aside the certification of a bargaining representative made on January 14, 1947, by the Wisconsin Employment Relations

Board for employees of the La Crosse Telephone Corporation.

The Wisconsin Employment Relations Board appealed through the Attorney General of the State of Wisconsin, to the Supreme Court of Wisconsin from the judgment of the Circuit Court of La Crosse County. The appellant in this cause argued in its brief and orally before the Supreme Court of Wisconsin that the decision of Judge Cowie should be sustained on the ground that the Wisconsin Employment Relations Board has no jurisdiction to conduct elections or to certify collective bargaining representatives among and for employees employed by an employer engaged in interstate commerce. It was further contended by appellant that any such purported exercise of jurisdiction is null and void as are any proceedings or order based thereon, because contrary to Article I, Section 8, and Article VI of the Constitution of the United States, such matter falling within the sole and exclusive jurisdiction of the National Labor Relations Board. Appellant further contended before the Supreme Court of Wisconsin that the State Board would have no authority to enforce its certification in the unfair labor practice proceedings then pending by reason of the enactment of the Labor Management Relations Act of 1947 and in particular Section 10(a) of such Act providing for the ceding of jurisdiction by the National Labor Relations Board to State labor relation agencies. The Supreme Court of Wisconsin in a decision rendered December 23, 1947, reversed the judgment of Judge Cowie of the Circuit Court of La Crosse County and remanded the cause with directions to enter judgments in accordance with its opinion which sustained the State Board's Direction of Election and its certification of the Guild. The Supreme Court of Wisconsin ruled that the National Labor Relations Board has paramount power over

the subject of bargaining representatives, but that such power is not exclusive in the instant case until the federal power is exercised or jurisdiction is taken as to particular employees. The Supreme Court of Wisconsin was also of the view that the decision of the Supreme Court of the United States in *Bethlehem Steel Company* v. *New York State Labor Relations Board* did not require a ruling in this case that the State Board is without jurisdiction.

It is submitted that the foregoing demonstrates that in this case there is drawn in question the validity of a statute of the State of Wisconsin on the ground of its being repugnant to the Constitution or laws of the United States and that the final judgment here sought to be reviewed of the Supreme Court of Wisconsin, that being the highest court of the State of Wisconsin in which a decision in this case could be had, is in favor of the validity of said statute. The foregoing also demonstrates that the validity of such statute has been drawn in question by appellant at each stage of the judicial proceedings in this case. Accordingly it is clear that under the provisions of Section 237(a) of the Judicial Code, as amended, the Supreme Court of the United States has jurisdiction to review upon appeal said final judgment of the Supreme Court of Wisconsin.

Cases which appellant believes sustain such jurisdiction are the following:

Allen-Bradley Local No. 1411, United Electrical, Radio and Machine Workers of America, et al., v. *Wisconsin Employment Relations Board, et al.*, 315 U. S. 740 (1942);

Bethlehem Steel Co. et al., v. *New York State Labor Relations Board*, 330 U. S. 767 (1947);

Butler Bros. v. *McColgan*, 315 U. S. 501 (1942);

Chaplinsky v. *New Hampshire*, 315 U. S. 568 (1942);

Duckworth v. *Arkansas*, 314 U. S. 390 (1941);

Faitoute Iron and Steel Co. et al., v. *City of Asbury Park*, 316 U. S. 502 (1942);
Illinois Natural Gas Co. v. *Central Illinois Public Service Co. et al.*, 314 U. S. 498 (1942);
Municipal Investors Assoc. v. *Birmingham et al.*, 316 U. S. 153 (1942);
Standard Oil Co. of California v. *Johnson, Treasurer of California*, 316 U. S. 481 (1942);
Taylor v. *Georgia*, 315 U. S. 25 (1942).

III. The Questions Involved in the Appeal here Sought Are Substantial

The question in this cause is whether the National Labor Relations Board has exclusive jurisdiction over the conduct of elections to determine bargaining representatives in industry affecting commerce. A decision on this point is of great importance to appellant in the conduct of its affairs in the various States and is also of great importance to all employers and employees engaged in industry affecting commerce.

A—*This cause presents a "question of representation affecting commerce."* The National Labor Relations Act defines the term "affecting commerce" as

> "meaning in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (Sec. 2(7)).

It is admitted that the La Crosse Telephone Corporation is a telephone company in the City of La Crosse which is engaged in the furnishing of telephone communication, both within the State of Wisconsin and to various points outside the State of Wisconsin by means of long distance telephone connections. It has been held in the case of

National Labor Relations Board v. *Central Missouri Telephone Company* (115 Fed. 2d 563 (C. C. A. 8)) that a telephone company whose lines are wholly within one State but connected with lines of other companies in other States for the purpose of transmitting calls to points outside of the home State is an instrumentality of, and thus is engaged in interstate commerce within the meaning of the Act regardless of the fact that such long distance calls constitute only a small percentage of the total business.

There can be no dispute that the La Crosse Telephore Company is engaged in interstate commerce and that a question of representation of its employees is a "question of representation affecting commerce" within the meaning of Section 9 of the National Labor Relations Act.

B—*The question over which the State Board in the state proceeding seeks to assert jurisdiction is covered by the National Act and is within the exclusive jurisdiction of the National Board.* The basic position of the Supreme Court of Wisconsin appears to be that the power of the National Board is not exclusive until the federal power is exercised or jurisdiction is taken as to particular employees. This rule would lead to a case by case determination of whether a state labor relations board has jurisdiction to determine the bargaining representative for a company whose operations fall within the scope of the National Act.

The decision of the Supreme Court of the United States in the *Bethlehem Steel Company et al.*, v. *New York State Labor Relations Board* (330 U. S. 767, 12 CCH Labor Cases Page 51,899) rejects this position. In that case a state labor relations board sought to make a determination of the appropriateness of a bargaining unit for foremen of a plant belonging to an industry subject to the jurisdiction of the National Board. The majority of the court ruled that the State Board had no jurisdiction and it is immaterial

whether the particular case has been acted upon by the National Board since it would be improper to apply a case by case test in determining the question of whether a State Board has power over such circumstances. Mr. Justice Jackson made the following rule in his opinion for the majority of the court:

> "If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict. The State argues for a rule that would enable it to act until the federal board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. The federal board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so, under our decision in the *Packard* case, *supra*, its power to decide whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted." (12 CCH Labor Cases 51,899. Page 51,903)

It is respectfully submitted that the ruling quoted above should control the disposition of the instant case.

The position asserted in this Statement has been adopted in two recent cases—*Food Tobacco Union* v. *Smiley*, dated October 30, 1947 (C. C. A. 3) (13 Labor Cases Par. 61144) and *Pittsburgh Railways Company Substation Operators and Maintenance Employees* (Case 54 A. (2d) 894) (13 Labor Cases Par. 64,028)

It should be noted that at the time the *Bethlehem Steel* case was decided by the Supreme Court the policies of the National Labor Relations Board and the State Labor Rela-

tions Boards with respect to the certification of bargaining units of foremen were identical.

Furthermore, the Wisconsin Employment Peace Act and the National Labor Relations Act differed in substantial respects on the holding of elections and the determination of appropriate units. This is particularly true with respect to the mandatory requirement in the Wisconsin Act for permitting employees in craft units to determine whether they wish to constitute a separate bargaining unit.

The action of the State Board in this particular case was not merely the performance of a ministerial function in holding an election; it also involved the making of a ruling on the applicability of the contract-bar ruling against elections. The procedure in this case, therefore, demonstrates the difficulty pointed out by the Supreme Court of the United States in the *Bethlehem Steel* case in permitting a case by case determination of whether a State Board has jurisdiction over a question of representation affecting commerce.

The ultimate question presented by this cause is whether the Congress intended to confer exclusive jurisdiction on the National Board. It is submitted that the considerations outlined above are conclusive indications of the congressional election to vest exclusive jurisdiction in the National Board.

The recent enactment of the Labor-Management Relations Act of 1947 serves to reinforce this conclusion. The new act contains specific provisions in a number of instances such as union security and the ceding of jurisdiction to state agencies where Congress wished to demonstrate its intention to permit the state agency to assert its power. In particular the Congress had a proviso added to Section 10(a) of the Act which reads as follows:

> "The Board is empowered by agreement with any agency of any State or Territory to cede to such agency

> jurisdiction over any cases in any industry (other than mining, manufacturing, communications and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

This proviso is explained in the Senate Committee Report (80th Congress, First Session Senate Report No. 105) as follows:

> "The proviso which has been added to this subsection permits the National Board to allow State labor relations boards to take final jurisdiction of cases in border-line industries (*i.e.*, border line insofar as interstate commerce is concerned), provided the State statute conforms to national policy."

The language in the Act and the Senate Report serve as evidence of the congressional intent with respect to the relative jurisdiction of State and Federal agencies. This language also serves to point out the difficulties which are created by the ruling of the Supreme Court of Wisconsin in this case. Any enforcement proceeding brought for the purpose of securing compliance with the certification order of the Wisconsin State Labor Relations Board will be barred by the language of Section 10(a) since the Wisconsin State Act and the National Act, as amended, are now inconsistent in even more material respects than was the case in the original National Labor Relations Act. In particular eligible unions under the National Act gain the status of eligibility only upon compliance with certain specified requirements with respect to affidavits and financial reports. No such requirement is established by the Wisconsin Employment Peace Act. It would, therefore, seem clear that even under the ruling of the Supreme Court

of Wisconsin in this case that the State agency could not assert jurisdiction on a case by case basis before the National Board had acted, nor could the National Board cede jurisdiction to the State agency.

IV. Conclusion

It is, therefore, respectfully submitted that the State Act cannot properly be construed so as to confer upon the State Board jurisdiction over the State proceeding, because if the State Act should be so construed, it would be contrary to the provision of Section 8 of Article I and Clause 2 of Article VI of the Constitution of the United States. Accordingly, the judgment of the Supreme Court of Wisconsin entered December 23, 1947, here appealed from, should be reversed with directions to reinstate the order of the Circuit Court for La Crosse County, Wisconsin, reversing and setting aside the certification of a bargaining representation for the La Crosse Telephone Corporation issued by the Wisconsin Employment Relations Board on January 14, 1947, because the State Board does not have jurisdiction over the subject matter of the State Board proceeding.

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APPENDIX "A"

Pertinent Provisions of the Wisconsin Employment Peace Act

(Chapter 111 Sub-Chapter I of the Wisconsin Statutes, Secs. 111.01 to 111.09)

Sec. 111.02(6). The term "collective bargaining unit" shall mean all of the employees of one employer (employed within the state), except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in Section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered, *provided, that in appropriate cases, and to aid in the more efficient administration of the employment peace act, the Board may find where agreeable to all parties affected in any way thereby an industry, trade or business comprising more than one employer in an association in any geographical area to be a "collective bargaining unit". A collective bargaining unit thus established by the Board shall be subject to all rights by termination or modification given by this Chapter 111 in reference to collective bargaining units otherwise established under said chapter.* Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employees in each separate unit shall have voted by secret ballot as provided in Section 111.05-(2) so to do.

Sec. 111.05 Representatives and Elections.—(1) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining, provided that any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto.

(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in Section 111.02(6), it shall be determined by secret ballot, and the Board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employes in any craft, division, department or plant as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of employees in a collective bargaining unit the Board shall determine the representatives thereof by taking a secret ballot of employees and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employee or group of employees participating in the election, except that the Board may, in its discretion, exclude from the ballot one who, at the time of the election stands deprived of his rights under this chapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The Board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by subsection (8) of Section 111.07 for review of orders of the Board.

(3m) Whenever an election has been conducted pursuant to subsection (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the Board may, in its discretion, if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a run-off election. In such run-off election, the Board may drop from the ballot the name of the representative that received the least number of votes at the original election, or the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

APPENDIX "D"

Pertinent Provisions of the National Labor Relations Act

(Act of July 5, 1935 29 U.S.C. Secs. 151-166) and of the Labor Management Relations Act, 1947. (Act of June 23, 1947, Public Law 101, 80th Congress)

The pertinent provisions of the National Labor Relations Act include Secs. 2(6), 2(7) and 9. These sections are set forth below:

"2(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"2(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

"9 Sec. 159. Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of

employees shall have the right at any time to present grievances to their employer.

"(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of Sections 151-166 of this title, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

"(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 160 of this title or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

"(d) Whenever an order of the Board made pursuant to section 160 (c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 160 (e) or 160 (f) of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

The pertinent provisions of the Labor Management Relations Act, 1947 include Secs. 2(6), 2(7), 9 and 10(a). These sections are marked on the attached copy of the Act at pages 3 and 9 to 12.

[PUBLIC LAW 101—80TH CONGRESS]

[CHAPTER 120—1ST SESSION]

[H. R. 3020]

AN ACT

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"Representatives and Elections

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: *Provided further*,

That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (e) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (c)

(f) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or con-

stituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

"Prevention of Unfair Labor Practices

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.